

House Engrossed Senate Bill

FILED

**KEN BENNETT
SECRETARY OF STATE**

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

CHAPTER 269

SENATE BILL 1259

AN ACT

AMENDING SECTIONS 48-851 AND 48-853, ARIZONA REVISED STATUTES; RELATING TO
FIRE DISTRICTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 48-851, Arizona Revised Statutes, is amended to
3 read:

4 48-851. Noncontiguous county island fire district; formation;
5 definition

6 A. A noncontiguous county island fire district shall be formed by the
7 following procedures:

8 1. One or more persons who wish to petition for a noncontiguous county
9 island fire district shall request and the county assessor shall provide a
10 map of all of the county island areas that are contained within the municipal
11 planning area of a city.

12 2. Within thirty days after receiving a map from the county assessor,
13 the person shall submit a revised map that indicates those county island
14 areas that are proposed to be included in the noncontiguous county island
15 fire district and shall submit the names and addresses of three persons who
16 are proposed to serve as the organizing board of the district.

17 3. On receipt of the revised map and the proposed organizing board's
18 membership, the board of supervisors shall set a day for a hearing on the
19 proposed district formation.

20 4. The clerk of the board of supervisors shall mail, by first class
21 mail, written notice of the statement, its purpose and notice of the day,
22 hour and place of the hearing on the proposed district to each owner of
23 taxable property and to each household in which a qualified elector resides
24 within the boundaries of the proposed district. The clerk of the board of
25 supervisors shall post the notice in at least three conspicuous public places
26 in the area of the proposed district and shall publish twice in a daily
27 newspaper of general circulation in the area of the proposed district, at
28 least ten days before the hearing, or, if no daily newspaper of general
29 circulation exists in the area of the proposed district, at least twice at
30 any time before the date of the hearing, a notice setting forth the purpose
31 of the proposed district formation, the description of the area of the
32 proposed district and the day, hour and place of the hearing.

33 5. At the hearing called pursuant to paragraph 3 of this subsection,
34 the board of supervisors shall hear those who appear for and against the
35 proposed district and shall determine whether the creation of the district
36 will promote public health, comfort, convenience, necessity or welfare. If
37 the board of supervisors determines that the public health, comfort,
38 convenience, necessity or welfare will be promoted, it shall authorize the
39 persons proposing the district to circulate petitions as provided in this
40 subsection. The order of the board of supervisors shall be final, but if the
41 request to circulate petitions is denied, a subsequent request for a similar
42 district may be refiled with the board of supervisors after six months from
43 the date of the denial.

1 6. Within fifteen days after receiving the approval of the board of
2 supervisors as prescribed by paragraph 5 of this subsection, the clerk of the
3 board shall determine the minimum number of signatures required for
4 compliance with paragraph 8, subdivision (b) of this subsection. After
5 making that determination, that number of signatures shall remain fixed,
6 notwithstanding any subsequent changes in voter registration records.

7 7. After receiving the approval of the board of supervisors as
8 provided in paragraph 5 of this subsection, any adult person may circulate
9 and present petitions to the board of supervisors of the county in which the
10 district is located. All petitions circulated shall be returned to the board
11 of supervisors within one year from the date of the approval of the board of
12 supervisors pursuant to paragraph 5 of this subsection. Any petition that is
13 returned more than one year from that date is void. ON AUTHORIZATION OF THE
14 BOARD OF SUPERVISORS TO CIRCULATE PETITIONS, THE ORGANIZING BOARD OF THE
15 DISTRICT ESTABLISHED PURSUANT TO PARAGRAPH 2 OF THIS SUBSECTION MAY ENTER
16 INTO WRITTEN AGREEMENTS WITH THIRD PARTIES TO PROVIDE SERVICES RELATED TO THE
17 FORMATION OF THE DISTRICT THAT MAY INCLUDE THE COST OF CIRCULATING PETITIONS
18 AND ASSOCIATED EXPENSES, BUT IN NO EVENT MAY THE COST OF REIMBURSABLE
19 EXPENSES EXCEED FIFTEEN DOLLARS PER PARCEL. THE DISTRICT SHALL REIMBURSE
20 THIRD PARTIES SUBJECT TO THE SUCCESSFUL FORMATION OF THE DISTRICT AND ON
21 RECEIPT OF SECONDARY PROPERTY TAX REVENUES BY THE DISTRICT.

22 8. The petitions presented pursuant to paragraph 7 of this subsection
23 shall comply with the provisions regarding verification in section 48-266 and
24 shall:

25 (a) At all times, contain a legal description of the boundaries of the
26 proposed district and a detailed, accurate map of the proposed district and
27 the names, addresses and occupations of the proposed members of the
28 district's organizing board of directors. No alteration of the proposed
29 district shall be made after receiving the approval of the board of
30 supervisors as provided in paragraph 5 of this subsection.

31 (b) Be signed by more than one-half of the aggregate number of
32 property owners in the county island areas contained in the proposed
33 district.

34 9. On receipt of the petitions, the board of supervisors shall set a
35 day, not more than thirty days from that date, for a hearing on the petition.

36 10. Before the hearing called pursuant to paragraph 9 of this
37 subsection, the board of supervisors shall determine the validity of the
38 petition signatures presented. At the hearing called pursuant to paragraph 9
39 of this subsection, the board of supervisors, if the petitions are valid,
40 shall order the formation of the district. The board of supervisors shall
41 enter its order setting forth its determination in the minutes of the
42 meeting, not later than ten days from the day of the hearing, and a copy of
43 the order shall be filed in the county recorder's office. The order of the
44 board of supervisors shall be final, and the proposed district is formed
45 thirty days after the board of supervisors votes to form the district. A

1 decision of the board of supervisors under this subsection is subject to
2 judicial review under title 12, chapter 7, article 6.

3 B. For the purpose of determining the validity of the petitions
4 presented pursuant to subsection A, paragraph 7 of this section property held
5 in multiple ownership shall be treated as if it had only one property owner,
6 so that the signature of only one of the owners of property held in multiple
7 ownership is required on the formation petition.

8 C. If a district is formed pursuant to this section, the cost of
9 publication of the notice of hearing and the mailing of notices to electors
10 and property owners and all other costs incurred by the county as a result of
11 this section shall be a charge against the district.

12 D. A district organized pursuant to this section shall have an
13 organizing board of directors to administer the affairs of the district until
14 a duly constituted board of directors is elected as provided in this title.
15 The organizing board shall have all the powers, duties and responsibilities
16 of an elected board. The organizing board shall consist of the three
17 individuals named in the petitions presented pursuant to subsection A of this
18 section. If a vacancy occurs on the organizing board, the remaining board
19 members shall fill the vacancy by appointing an interim member. Members of
20 the organizing board shall serve without compensation but may be reimbursed
21 for actual expenses incurred in performing their duties. The organizing
22 board shall elect from its members a chairperson and a clerk. For any
23 challenge to the formation of the district, the district board is a proper
24 party to the challenge and any petition circulators are not proper parties.

25 E. For the purposes of this article, "noncontiguous county island fire
26 district" means a district that is formed pursuant to this section in a
27 county that has a population of at least one million five hundred thousand
28 persons and for which ~~all of the following apply~~ EITHER APPLIES:

29 1. The district consists of only noncontiguous county islands in a
30 geographic boundary area that is contained in a municipal planning area and:
31 ~~within the boundaries of an automatic aid consortium where there is no~~
32 ~~private provider of fire protection service at the time of the district's~~
33 ~~formation.~~

34 (a) IS WITHIN THE BOUNDARIES OF AN AUTOMATIC AID CONSORTIUM IN WHICH
35 THERE IS NO PRIVATE PROVIDER OF FIRE PROTECTION SERVICE AT THE TIME OF THE
36 DISTRICT'S FORMATION.

37 2. (b) Fire protection services are not funded pursuant to section
38 48-807 at the time of the district's formation.

39 3. (c) There is only one fire district within the geographic area of
40 the municipal planning area for any one city or town.

41 2. THE DISTRICT CONSISTS OF ONLY ONE OR MORE NONCONTIGUOUS COUNTY
42 ISLANDS THAT ARE NOT CONTAINED IN A MUNICIPAL PLANNING AREA IN WHICH THE
43 GEOGRAPHIC BOUNDARY AREA OF THE DISTRICT IS SURROUNDED BY ANY COMBINATION OF
44 FEDERAL, STATE, MUNICIPAL OR FIRE DISTRICT JURISDICTIONAL BOUNDARIES AND:

1 (a) THE AREA IS CURRENTLY SERVED BY A PRIVATE FIRE PROTECTION SERVICE
2 PROVIDER.

3 (b) FIRE PROTECTION SERVICES ARE NOT FUNDED PURSUANT TO SECTION 48-807
4 AT THE TIME OF THE DISTRICT'S FORMATION.

5 Sec. 2. Section 48-853, Arizona Revised Statutes, is amended to read:
6 48-853. District board; powers and duties; intergovernmental
7 agreements; contract; administration; definition

8 A. A fire district formed pursuant to this article, through its board,
9 shall:

10 1. Hold public meetings at least once each calendar month.

11 2. Prepare an annual budget that contains detailed estimated
12 expenditures for each fiscal year and that clearly shows expenses of the
13 district. The budget shall be posted in three public places and published in
14 a newspaper of general circulation in the district thirty days before a
15 public hearing at a meeting called by the board or fire chief to adopt the
16 budget. Copies of the budget shall also be available to members of the
17 public on written request to the district. Following the public hearing, the
18 district board or appointed chief shall adopt a budget.

19 3. Require probationary employees in a paid sworn firefighter
20 position, a reserve firefighter position or a volunteer firefighter position
21 of a provider of fire protection and emergency medical services to submit a
22 full set of fingerprints to the fire district. The fire district shall
23 submit the fingerprints to the department of public safety for the purpose of
24 obtaining a state and federal criminal records check pursuant to section
25 41-1750 and Public Law 92-544. The department of public safety may exchange
26 this fingerprint data with the federal bureau of investigation. This
27 paragraph does not apply to personnel that are provided to a fire district by
28 any public or private entity that provides fire protection and emergency
29 medical services to the fire district and that has already fully complied
30 with fingerprint submittal requirements as otherwise provided by law.

31 4. Appoint the fire chief of the fire service provider selected
32 pursuant to paragraph 8 of this subsection, either public or private, as the
33 fire chief for the district.

34 5. Adopt the fire code of the municipality whose municipal planning
35 area includes the district except that the fire district's authority to
36 conduct inspections shall apply only to commercial and industrial properties
37 and shall not apply to residential properties.

38 6. Keep three copies of the applicable fire code, amendments and
39 revisions on file for public inspection.

40 7. Notify the county board of supervisors of the cost of providing
41 fire protection service and emergency medical service for each household or
42 other structure in the district if the district provides service pursuant to
43 paragraph 8, subdivision (a) or ~~(b)~~ (c) of this subsection.

44 8. Act within sixty days after the formation of the district to do any
45 of the following:

1 (a) IF THE DISTRICT IS FORMED PURSUANT TO SECTION 48-851,
2 SUBSECTION E, PARAGRAPH 1, enter into an intergovernmental agreement with a
3 municipal provider for fire protection services for the district. A
4 municipal provider seeking to enter into AN agreement with the district
5 FORMED PURSUANT TO SECTION 48-851, SUBSECTION E, PARAGRAPH 1 shall make a
6 formal expression of intent to enter into an agreement with the district
7 within twenty-one days of district formation.

8 (b) IF THE DISTRICT IS FORMED PURSUANT TO SECTION 48-851,
9 SUBSECTION E, PARAGRAPH 2, ENTER INTO A CONTRACT WITH A PRIVATE FIRE
10 PROTECTION SERVICE PROVIDER FOR A DISTRICT FORMED PURSUANT TO SECTION 48-851,
11 SUBSECTION E, PARAGRAPH 2. THE PRIVATE FIRE PROTECTION SERVICE PROVIDER
12 SEEKING TO ENTER INTO A CONTRACT WITH THE DISTRICT SHALL MAKE A FORMAL
13 EXPRESSION OF INTENT WITHIN TWENTY-ONE DAYS OF DISTRICT FORMATION TO ENTER
14 INTO THE CONTRACT WITH THE DISTRICT. IF THE PRIVATE FIRE PROTECTION SERVICE
15 PROVIDER MAKES A FORMAL EXPRESSION OF INTENT TO ENTER INTO A CONTRACT WITH
16 THE DISTRICT, THE PROVIDER SHALL HAVE A RIGHT OF FIRST REFUSAL TO CONTRACT
17 WITH THE DISTRICT ON TERMS ESTABLISHED BY THE DISTRICT PURSUANT TO
18 SUBSECTION A, PARAGRAPH 8, SUBDIVISION (c) OF THIS SECTION.

19 ~~(b)~~ (c) Issue a request for proposals for nonmunicipal private
20 providers of fire protection services for the district. ~~A request for~~
21 ~~proposals may be issued only if no municipal providers of fire protection~~
22 ~~services have made an expression of intent seeking to enter into a fire~~
23 ~~protection agreement with the district~~ IF THE CURRENT PRIVATE PROVIDER FAILS
24 TO NOTIFY THE DISTRICT OF ITS INTENTION TO ENTER INTO A CONTRACT WITH THE
25 DISTRICT OR FOR ANY CONTRACT TO BE AWARDED PURSUANT TO SUBSECTION A,
26 PARAGRAPH 8, SUBDIVISION (b) OF THIS SECTION. Notwithstanding any other law,
27 municipal annexation shall not be undertaken during the term of any contract
28 entered into between the district and a private fire service provider, except
29 that in the one hundred eighty day period before the end of the contract, the
30 municipality shall notify the residents of the opportunity to annex into the
31 municipality. A resident shall notify the district and the municipality
32 within ninety days before the end of the contract that the resident is
33 annexing into the municipality and shall complete the annexation within ten
34 days after the completion of the contract. If no district residents notify
35 the municipality that the resident is annexing, the district may renew the
36 contract automatically. If a resident proposes to annex into the
37 municipality, the district shall issue a request for proposals again as
38 prescribed in this subdivision.

39 ~~(c)~~ (d) Before applying this subdivision, ~~the district shall~~ request
40 an independent review by the county attorney of the negotiations, if any,
41 that were conducted as prescribed in subdivision (a) of this paragraph and
42 the request for proposals and resulting bids. After the independent review,
43 the county attorney shall certify whether the negotiations and proposals were
44 based on commercially reasonable assumptions. If the county attorney
45 certifies that any one or more of the provisions are not commercially

1 reasonable, the district and the other party to the negotiations have ten
2 days to cure and continue negotiations before resubmitting information on the
3 negotiations and proposals to the county attorney for certification.
4 Notwithstanding any other law, the county attorney shall have access to
5 sealed bids for purposes of this subdivision. The county attorney shall
6 review and issue a certification pursuant to this subdivision within thirty
7 days after the information and documents regarding negotiations and proposals
8 are submitted to the county attorney. If a fire district AS DEFINED IN
9 SECTION 48-851, SUBSECTION E, PARAGRAPH 1 does not enter into an
10 intergovernmental agreement pursuant to subdivision (a) of this paragraph or
11 enter into a contract pursuant to subdivision ~~(b)~~ (c) of this paragraph, the
12 surrounding municipality shall provide fire protection and emergency medical
13 services except for services regulated pursuant to title 36, chapter 21.1 in
14 the district immediately on request by the district, following final
15 certification by the county attorney. The municipality shall be compensated
16 by the district as follows:

17 (i) A three person board shall set the secondary property tax rate for
18 the district. The district shall appoint one person to the board, the
19 surrounding municipality shall appoint one person to the board, and the two
20 appointees shall agree on a third person for the board. If the two
21 appointees cannot agree on a third appointee within five days after the two
22 persons are appointed, the county board of supervisors shall appoint the
23 third person to the board.

24 (ii) The three person board shall meet and set the tax rate within
25 thirty days after the third person is appointed to the board.

26 (iii) The district shall levy the tax at the rate as determined by the
27 three person board and the tax shall be collected as other property taxes are
28 collected. On receipt of monies from the property tax levied, the district
29 shall reimburse the county for the costs associated with the formation of the
30 district, including administrative expenses, and shall transfer the remaining
31 monies to the surrounding municipality.

32 (e) ON FORMATION AND SUBJECT TO THE AVAILABILITY OF FUNDS, REIMBURSE
33 THIRD PARTIES FOR SERVICES RENDERED PURSUANT TO SECTION 48-851, SUBSECTION A,
34 PARAGRAPH 7.

35 9. Require that any intergovernmental agreement or contract between
36 the district and a provider of fire protection services ~~to~~ include:

37 (a) A term of duration between three and five years.

38 (b) A provision setting forth the cost of service and performance
39 criteria.

40 (c) An acknowledgment of the right of the municipality to determine
41 the location of future infrastructure if the district is in the
42 municipality's planning area at the time of the execution of the contract.

43 10. If necessary, issue a request for proposals for providers of
44 emergency medical services and enter into an intergovernmental agreement or

1 contract with a provider of emergency medical services except for those
2 services regulated by title 36, chapter 21.1.

3 11. Assess and levy a secondary property tax to pay for the costs of
4 the fire protection service or emergency medical service except for those
5 services regulated by title 36, chapter 21.1. A secondary property tax
6 assessed pursuant to this section is not subject to the levy limitation
7 prescribed by section 48-807.

8 12. Defend, indemnify and hold harmless a municipal provider or any
9 other provider of fire protection from and against any claims or expenses to
10 which it may be subjected by reason of injury or death of any person or loss
11 or damage to any property directly attributable to the provision of the
12 services unless the services were provided in a grossly negligent manner.
13 The fire district shall secure insurance sufficient to cover liability
14 exposure.

15 B. A fire district formed pursuant to this article, through its board,
16 may:

17 1. Contract for administrative staff services, if any, deemed
18 necessary or appropriate to carry out its powers and duties, but a member of
19 a district board, shall not be an employee of the district.

20 2. Retain a certified public accountant to perform an annual audit of
21 district books.

22 3. Retain private legal counsel.

23 4. Sue and be sued.

24 5. Accept gifts, contributions, bequests and grants and comply with
25 any requirements of such gifts, contributions, bequests and grants not
26 inconsistent with this article.

27 6. Appropriate and expend annually such monies as are necessary for
28 the purpose of fire districts belonging to and paying dues in the Arizona
29 fire district association and other professional affiliations or entities.

30 C. The county attorney may advise and represent the district when in
31 the county attorney's judgment such advice and representation are appropriate
32 and not in conflict with the county attorney's duties under section 11-532.
33 If the county attorney is unable to advise and represent the district due to
34 a conflict of interest, the district may retain private legal counsel or may
35 request the attorney general to represent it, or both.

36 D. The chairperson and clerk of the district board or their respective
37 designees, as applicable, shall draw warrants on the county treasurer for
38 money required to operate the district in accordance with the budget and, as
39 so drawn, the warrants shall be sufficient to authorize the county treasurer
40 to pay from the fire district fund.

41 E. The district shall not incur any debt or liability in excess of
42 taxes levied and to be collected and the money actually available and
43 unencumbered at the time in the fund, except as provided in section 48-807.

1 F. If a district formed under section 48-851 agrees to provide fire
2 and emergency medical services in a county island where a private provider of
3 fire or emergency services already has facilities or provides service, the
4 district and the private provider shall enter into an agreement covering the
5 roles and relationships regarding mutual aid or backup and any services for
6 which the district wishes to contract and any reimbursement or billing and
7 collection practices. The agreement shall be executed before the district
8 begins providing service in the county island. A district may enter into an
9 intergovernmental agreement with appropriate regional automatic aid dispatch
10 systems.

11 G. This section does not require a fire district or a city or town to
12 provide fire protection or emergency medical services to an area of the
13 county that is receiving services from a private provider, except as provided
14 by a mutual aid or backup agreement pursuant to this section.

15 H. For the purposes of this article, "fire service" and "fire
16 protection" include fire prevention, emergency medical services, inspection
17 of commercial or industrial property where a known code violation exists and
18 enforcement.

APPROVED BY THE GOVERNOR APRIL 26, 2011.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 26, 2011.

Passed the House April 19, 20 11,

by the following vote: 48 Ayes,

11 Nays, 1 Not Voting

[Signature]
Speaker of the House

Cheryl Laube
Chief Clerk of the House

Passed the Senate February 22, 20 11,

by the following vote: 28 Ayes,

2 Nays, 0 Not Voting

[Signature]
President of the Senate

Charmian Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

 day of , 20 ,

at o'clock M.

Secretary to the Governor

Approved this day of

 , 20 ,

at o'clock M.

Governor of Arizona

S.B. 1259

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this day of , 20 ,

at o'clock M.

Secretary of State

SENATE CONCURS IN HOUSE
AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 19, 20 11

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

Russell Thomas
President of the Senate

Armin Ballester
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

20 day of April, 20 11

at 12:00 o'clock P. M.

Alfred Bendle
Secretary to the Governor

Approved this 26th day of

April

at 3:40 o'clock P. M.

Janice K. Brewer
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 26th day of April, 20 11

S.B. 1259

at 4:57 o'clock P. M.

Ken Blumett
Secretary of State